

Memorandum

To: **BRIAN STIGER**
Executive Officer
Board of Chiropractic Examiners

Date: December 13, 2007

From: **Division of Legal Affairs**
Department of Consumer Affairs

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Subject: Manipulation Under Anesthesia Chiropractic Scope of Practice

The Board of Chiropractic Examiners ("Board") Manipulation Under Anesthesia ("MUA") Committee has been directed by the Board to draft regulations setting forth the standard of care to be met when a chiropractor is performing MUA. As part of that process, the Committee has requested a legal opinion from the Legal Affairs Division of the Department of Consumer Affairs as to whether the performance of MUA is within the scope of practice of a licensed chiropractor. For purposes of this memorandum, MUA is defined as the manipulation¹ of a patient who is sedated by the administration of anesthesia by a physician and surgeon or other health care provider who is legally authorized to administer anesthesia.

Question:

Is the performance of MUA on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider within the scope of practice of a chiropractor?

Answer:

The performance of MUA on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider who is legally authorized to administer anesthesia is within the scope of practice of a chiropractor.

¹ For purposes of this opinion, "manipulation" means the manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord.

DISCUSSION

BACKGROUND

Board records show that as of 1990, the Board's position has been that MUA is within the scope of practice of a chiropractor.² On July 23, 1992, the Board held an informational hearing in San Diego, California on MUA. Shortly after the hearing started, a member of the public asked the Board "[W]hat up until this day is our Board's opinion on manipulation under anesthesia?" The Board Chairman at this time, Dr. Louis E. Newman, D.C., responded, "[T]he opinion of the Board has been that a chiropractic adjustment performed properly is a chiropractic adjustment, whether it is performed under anesthesia or not. And that's been the Board's position...."³ The issue has arisen several times since 1990 due to changes in Workers Compensation laws, inquiries from other healing arts practitioners, and law enforcement agency actions.

ANALYSIS

The historical context of the Chiropractic Initiative Act of 1922 ("Chiropractic Act") was set out in *People v. Schuster*, (1932) 122 Cal.App.Supp. 790, 792. "When the Medical Practice Act was adopted in 1913, it was the only act regulating the practice of the healing arts. It applied to chiropractors, and required them to have certificates issued by the board of medical examiners. But in 1922 an act regulating the practice of chiropractor was adopted as an initiative measure. (Stats. 1923, p.lxxxviii.)" The passage of the Chiropractic Act did not repeal or amend any part of the 1913 Medical Practices Act ("MPA"). Instead, it provided an exception to the 1913 MPA by allowing the practice of chiropractic as authorized by the Chiropractic Act. (*People v. Mangiagli*, (1950) 97 Cal.App.2d Supp. 935, 938.)

Section 7 of the Chiropractic Initiative Act of California reads:

One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated "License to practice chiropractic," which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, **nor the use of any**

² *Minutes of the Public Meeting of the Board of Chiropractic Examiners*, September 13, 1990, agenda item 11, at page 13.

³ Transcription from Informational Hearing, Manipulation Under Anesthesia, July 23, 1992, San Diego, California.

drug or medicine now or hereafter included in materia medica.
(Emphasis added.)

California courts have interpreted Section 7 to create a three-part test to determine if an act or procedure is within the chiropractic scope of practice. According to the holdings in these cases the following three prongs must be satisfied. (*Fowler v. Appellate District, Superior Court of Los Angeles, County of Los Angeles*, (1938) 32 Cal.App.2d 737, *Hartman v. Court of Appeal*, (1935) 10 Cal.App.2d 213, and *Tain v. State Board of Chiropractic Examiners*, (2005)130 Ca.App.4th 609.)

- (1) an act or procedure must be understood as chiropractic in its ordinary and general sense
- (2) it must have been taught in the chiropractic schools in 1922, and
- (3) it does not constitute the practice of medicine.

It is well established that "manipulation" is within the scope of practice of a chiropractor. In *Crees v. California State Board of Medical Examiners* (1963) 213 Cal.App.2d 195, 205, the court described the chiropractic scope of practice to include the "treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord." The Board later adopted a regulation that codified the holding in *Crees*, the California Code of Regulations reads: "A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereof." (Section 302(a)(1).) Consequently, the first prong that a procedure must be understood as chiropractic in its ordinary and general sense has been met.

An argument has been raised that MUA was not taught in chiropractic schools in 1922 and therefore it is not within the scope of practice. However, the courts have made it clear that the chiropractic profession is not frozen in time. The trial court in *Crees* discussed this very point. "It is true that chiropractic is not a static system of healing and that it may advance and change in technique, teaching, learning, and mode of treatment within the limits of chiropractic as set forth in paragraph H above. It may not advance into the fields of medicine, surgery, osteopathy, dentistry, or optometry." (p. 202) This dynamic interpretation of the practice of chiropractic is not without limitation. The *Hartman* case made the point that the Chiropractic Act must be read as whole and "cannot be taken as authorizing a license to do anything and everything that might be taught in a school. A short course on surgery or one in law might be given, incidentally, and it would not follow that the section would authorize a licensed chiropractor to engage in such other professions."⁴ However, since manipulation was taught in the schools in 1922, the second prong of the three-part test has been met.

⁴ *Hartman*, at p. 218.

The last prong that must be met is that the practice does not constitute the practice of medicine. The prohibition against chiropractors using drugs derives from the prohibition against chiropractors practicing medicine. The court in *Fowler* stated: "The statute declares that persons licensed under it shall not practice medicine, a practice which certainly includes the use and prescribing of medicines in whatever form or combination they may be prepared or sold."⁵ It is common knowledge and not controversial that chiropractors have been treating patients who have been prescribed drugs by other healing arts practitioners authorized to prescribe drugs. For example, a patient may be prescribed pain medication by a physician and surgeon after incurring a back injury and seek treatment from a chiropractor. Any other interpretation of the term "use drugs" would lead to the absurd result that a chiropractor could never treat a patient who is taking any drug for any type of ailment. This would include a drug related to the injury for which the patient is seeking treatment from a chiropractor as well as unrelated ailments such as high blood pressure.

Some have put forth the argument that the term "use" should be given its broadest application. For example, if the only way a chiropractor would be able to manipulate a patient is if the patient is sedated, the chiropractor is "using" drugs to accomplish the procedure. This interpretation is not supported by case law and would not be practical in its application. A chiropractor is not authorized to direct a patient to either take a drug or discontinue using a drug. If a patient came in who was using pain medication, the chiropractor would have to decide either to not provide any treatment or to provide treatment and later be accused of using drugs because a determination was later made that the chiropractor could not have performed the procedure unless the patient was drugged. This interpretation would also lead to an impractical situation for the Board's enforcement program. It would have to be proven at an administrative hearing that a patient at the time a patient received treatment would not have been able to receive that treatment without benefit of drugs. How much pain must a patient tolerate before it is determined that a treatment cannot be performed without using drugs? This would put both the patient and the chiropractor in an untenable situation.

Oftentimes, patients of other healing arts practitioners are medicated in order to ease discomfort related to treatments. For example, many patients are medicated before receiving physical therapy. The medication is necessary not only to ease the pain associated with the treatment but also to allow greater benefit to the patient. MUA is no different.

Consequently, the third prong of the test has been met since MUA does not constitute the practice of medicine as the chiropractor is not using, administering or dispensing drugs to a patient.

⁵ *Fowler*, 32 Cal.App.2d at 751.

CONCLUSION

The performance of MUA by a chiropractor on a patient who is sedated by the administration of anesthesia by a licensed physician and surgeon or other health care provider who is legally authorized to administer anesthesia is within the scope of practice of a chiropractor.

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